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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/913,320	10/09/2001	Ernst Freydl	5055	8497

7590 09/27/2002

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EXAMINER

MANOHARAN, VIRGINIA

ART UNIT

PAPER NUMBER

1764

DATE MAILED: 09/27/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/913,320

Applicant(s)

FREYDL ET AL

Examiner

Virginia Manoharan

Art Unit

1764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1) Responsive to communication(s) filed on 09 October 2001.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

4) Claim(s) 13-24 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 13-24 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a)  The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.

4) Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_

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The references cited in the Search Report have been considered, but will not be listed on any patent resulting from this application because they were not provided on a separate list in compliance with 37 CFR 1.98(a)(1). In order to have the references printed on such resulting patent (if allowed), a separate listing, preferably on a PTO-1449 form, must be filed in response to this Office action.

It is suggested that the heading "Brief Description of the Drawings" be incorporated into the specification at page 6, third line from the bottom.

The specification has not been checked to the extent necessary to determine the presence of all possible minor error, e.g., typographical, grammar, idiomatic, syntax and etc. Applicant's cooperation is requested in correcting any errors of which applicant may become aware on the specification.

Claims 13-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a. The preamble of claim 13 recites "A device for evaporating samples....", however, the body of the claim does not provide nor recite an evaporating device. See also claim 24.

b. In claim 18, line 2, "battles" is a typographical error.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13-24 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over anyone of Kowarski, Kuhn et al or Holland et al.

Anyone of the above references is deemed to anticipates or renders obvious the claimed "device for evaporating samples in sample vessels, each of said vessels being provided with at least one filling opening, said device comprising holding means for simultaneously holding several sample vessels, connection means connectable to the filling openings, by way of which the sample vessels individually or in groups are hermetically connectable to means for producing a vacuum and thereby be evacuated..." as broadly claimed in claim 13. Anyone of the above references further anticipates or renders obvious the claimed "... method for evaporating samples simultaneously held in several sample vessels each having a filling opening, said method comprising steps of hermetically connecting the filling opening of each of the vessels to a means for producing a vacuum, heating the samples in said vessels, and evacuating said vessels by means of said vacuum..." as broadly claimed in claim 24.

See e.g. col. 2, lines 42-62, Fig. 3 and the claims at cols. 9-12 of Kowarski; and the claims at cols. 13-18 of Kuhn et al.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- a. Gibler et al discloses a holder for evacuated test tubes.
- b. Forrest et al discloses an assay reaction apparatus,
- c. Boyd et al discloses an automatic closed tube sampler.
- d. Ruggeri, Coulter et al, Kopp et al, Kimura et al and Collasius et al all disclose an apparatus with tubular elements.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to V Manoharan whose telephone number is 703 308-3844. The examiner can normally be reached on Tues-Fri from 7:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marian Knodel can be reached on 703 308-4311. The fax phone numbers for the organization where this application or proceeding is assigned are 703 305-7718 for regular communications and 703 308-0651 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-0661.

Examiner Manoharan/ng  
September 25, 2002

*Manoharan*  
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